

Fishery Conservation and Management

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below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments*— (i) *Council action.* The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The amount of an ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process, specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action.* If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the FEDERAL REGISTER no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[76 FR 30274, May 25, 2011]

§ 648.97 Closed areas.

(a) *Oceanographer Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon

Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) OC1	40°10'	68°12'
(2) OC2	40°24'	68°09'
(3) OC3	40°24'	68°08'
(4) OC4	40°10'	67°59'
(5) OC1	40°10'	68°12'

(b) *Lydonia Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

LYDONIA CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) LC1	40°16'	67°34'
(2) LC2	40°16'	67°42'
(3) LC3	40°20'	67°43'
(4) LC4	40°27'	67°40'
(5) LC5	40° 27'	67°38'
(6) LC1	40°16'	67°34'

[70 FR 21946, Apr. 28, 2005]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Review.* The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that

produces the maximum yield per recruit (F_{max}): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures on an annual basis.* Based on this review and requests for research quota as described in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at least a 50-percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified F.

(2) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F, set after reductions for research quota.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F, set after reductions for research quota.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(9) Restrictions on gear other than otter trawls.

(10) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section, to prevent discarding of sublegal

sized summer flounder in excess of 10 percent, by weight.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission.

(d) *Commercial measures.* After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded.

(1) *Distribution of annual quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES	
State	Share (percent)
Maine	0.04756
New Hampshire	0.00046

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ANNUAL COMMERCIAL QUOTA SHARES— Continued

State	Share (percent)
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(ii) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notice in the FEDERAL REGISTER announcing such restoration.

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for

each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(3) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(4) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(5) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(6) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(e) *Recreational measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to

the MAFMC and Commission measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Council and the Commission will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states or regions formed voluntarily by adjacent states (i.e., multi-state conservation equivalency regions) may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of Marine Recreational Fisheries Statistics Survey (MRFSS) landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review conservation equivalency proposals and determine whether or not they achieve the necessary ad-

justment to recreational landings. The Commission will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The Commission may allow states assigned the precautionary default measures to resubmit revised management measures. The Commission will detail the procedures by which the state can develop alternate measures. The Commission will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(f) *Research quota.* See § 648.21(g).

[66 FR 36211, July 11, 2001, as amended at 66 FR 42160, Aug. 10, 2001; 67 FR 6880, Feb. 14, 2002; 67 FR 50372, Aug. 2, 2002; 69 FR 62821, Oct. 28, 2004; 70 FR 310, Jan. 4, 2005; 70 FR 53970, Sept. 13, 2005; 71 FR 42317, July 26, 2006; 73 FR 4755, Jan. 28, 2008]

EFFECTIVE DATE NOTE: At 76 FR 60626, Sept. 29, 2011, § 648.100 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Summer Flounder Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

(2) *Periodicity.* The summer flounder commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the

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SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Summer Flounder Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the summer flounder stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

EFFECTIVE DATE NOTE: At 76 FR 60626, Sept. 29, 2011, § 648.101 was revised, effective

October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Summer Flounder Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Summer Flounder Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Summer Flounder Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.100.

[67 FR 50372, Aug. 2, 2002, as amended at 73 FR 29999, May 23, 2008; 74 FR 30011, June 24, 2009]

EFFECTIVE DATE NOTE: At 76 FR 60626, Sept. 29, 2011, § 648.102 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Summer Flounder Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and